

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

NESTLE USA, INC., SOCIETE DES
PRODUITS NESTLE S.A.,

Plaintiffs,

VS.

ULTRA DISTRIBUCIONES
MUNDIALES S.A. DE C.V., ULTRA
INTERNATIONAL DISTRIBUTORS,
INC.,

Defendants.

5-20-CV-00384-OLG-RBF

ORDER

Before the Court are the following motions: (1) Defendant Ultra Distribuciones Mundiales S.A. de C.V. and Ultra International Distributors, Inc.'s Motion to Strike Expert Testimony, *see* Dkt. No. 227 (213-1); (2) Ultra's Motion to Strike Expert Testimony, *see* Dkt. No. 228 (214-1); (3) Plaintiff Nestle USA, Inc. and Societe des Produits Nestle S.A.'s Motion to Exclude Expert Testimony, *see* Dkt. No. 294 (250-1); and (4) Nestle's Motion to Exclude Expert Testimony, *see* Dkt. No. 295 (251-1). The District Court referred this case for resolution of all pretrial matters, pursuant to Rules CV-72 and 1 of Appendix C of the Local Rules of the United States District Court for the Western District of Texas. *See* Dkt. No. 192. Authority to enter this Order stems from 28 U.S.C. § 636(b)(1)(A).

For the reasons explained at the hearing held on January 24, 2023, as well as those provided in the parties' respective briefing in opposition to the motions to strike, the above-listed motions, Dkt. Nos. 227, 228, 294 & 295, are **DENIED WITHOUT PREJUDICE**.

The arguments made at the hearing on January 24 appear to relate primarily to the weight afforded expert evidence as opposed to its admissibility, and they are therefore better suited for

cross-examination at trial. Some issues raised present a closer call. For example, Ultra's expert's use of the apportionment method to calculate offsets to potential damages raises concerns for the Court, although the Court declines to strike the expert at this time. *See generally* Dkt. No. 295 (motion to strike expert report and testimony of Jorge Manzanilla Canizares). In any event, the arguments at issue may be re-raised at a later juncture, including as may be appropriate via motion *in limine* or at trial.

IT IS SO ORDERED.

SIGNED this 7th day of February, 2023.



RICHARD B. FARRER
UNITED STATES MAGISTRATE JUDGE